

IN THE UNITED STATES DISTRICT COURT  
SOUTHERN DISTRICT OF INDIANA  
INDIANAPOLIS DIVISION

ROBBIE MCCAIN-FICKLIN,	)	
	)	
Plaintiff,	)	
	)	
v.	)	Case No. 1:20-cv-3053
	)	
PREMIER CARE OF INDIANA, INC.,	)	
	)	
Defendant.	)	

**NOTICE OF REMOVAL OF ACTION PURSUANT TO 28 U.S.C.  
§§ 1331 and 1441(a)**

To the Clerk of the above-entitled Court:

Defendant Premier Care of Indiana, Inc. ("Premier Care"), by and through undersigned counsel, notifies this Court of the removal of the above civil action from the Superior Court of the State of Indiana, County of Marion to the United States District Court for the Southern District of Indiana, pursuant to 28 U.S.C. §§ 1331, 1441(a), and 1446.

**I. THE STATE COURT ACTION**

1. Plaintiff Robbie McCain-Ficklin filed a civil action against Premier Care on October 7, 2020 in the Superior Court of the State of Indiana, County of Marion, which was served on Premier Care by certified mail, and received on October 28, 2020. The action is entitled *Robbie McCain-Ficklin v. Premier Care of Indiana, Inc.* and bears the case number 49D12-2010-CT-035427.

2. True and correct copies of the Summons, Complaint, and Civil Cover Sheet are attached as Exhibit A. These are the only process, pleadings, and orders that have been served on Premier Care in this matter.

3. Premier Care is aware of no further proceedings that have occurred in state court as of the date of this Notice.

## **II. FEDERAL JURISDICTION EXISTS**

4. This action is properly removable under 28 U.S.C. § 1441(b) because the U.S. District Court has original jurisdiction under 28 U.S.C. § 1331, which provides, “The district courts shall have original jurisdiction of all civil actions arising under the Constitution, the laws, or treaties of the United States.” Jurisdiction exists pursuant to § 1331 when a federal question is presented on the face of the plaintiff’s complaint. *See Rivet v. Regions Bank of La.*, 522 U.S. 470, 475 (1998).

5. Plaintiff’s Complaint alleges Premier Care violated two federal statutes, Title VII of the Civil Rights Act of 1964, 42 U.S.C. § 2000e *et seq.* (“Title VII”) and 42 U.S.C. § 1981. *See* Plaintiff’s Complaint, ¶ 1. By asserting claims under Title VII and 42 U.S.C. § 1981, Plaintiff’s Complaint asserts a federal question under 28 U.S.C. § 1331. Thus, this case is properly removable under 28 U.S.C. § 1441(a).

## **III. VENUE IS PROPER**

6. The Marion County Superior Court is located within the Indianapolis Division of the Southern District of Indiana. 28 U.S.C. § 94(a)(1). Venue is proper in this Court because it is the “district and division embracing the place where such action is pending.” 28 U.S.C. § 1441(a).

#### IV. OTHER REQUIREMENTS FOR REMOVAL ARE MET

7. This Notice of Removal is timely under 28 U.S.C. § 1446(b) because it is filed within thirty (30) days of the date of service of Plaintiff's Complaint upon Premier Care.

8. On the same day this Notice is filed, Premier Care will serve a copy of it on Plaintiff's counsel and file a copy of the Notice with the Marion County Superior Court Clerk, pursuant to 28 U.S.C. § 1441(d). A copy of the Notice filed with the state court clerk is attached as Exhibit B.

WHEREFORE, Defendant Premier Care of Indiana, Inc. respectfully requests that this Court take jurisdiction of this action and issue all necessary orders and process to remove it from the Marion County Superior Court (State of Indiana), Civil Division 12 to the U.S. District Court for the Northern District of Indiana.

DATED this 20th day of November 2020.

Respectfully submitted,

OGLETREE, DEAKINS, NASH, SMOAK & STEWART,  
P.C.

By: s/ Bonnie L. Martin  
Bonnie L. Martin, IN 20248-18  
111 Monument Circle, Suite 4600  
Indianapolis, IN 46204  
Telephone: 317-916-1300  
Facsimile: 317-916-9076  
*bonnie.martin@ogletree.com*

Attorneys for Defendant Premier Care of Indiana,  
Inc.

**CERTIFICATE OF SERVICE**

I hereby certify that on November 20, 2020, a copy of the foregoing Notice of Removal was filed electronically. Notice of this filing will be sent to the following parties by operation of the Court's electronic filing system. Parties may access this filing through the Court's system.

Christopher C. Myers  
809 South Calhoun Street, Suite 400  
Fort Wayne, IN 46802  
260-424-0600

s/ Bonnie L. Martin

OGLETREE, DEAKINS, NASH, SMOAK & STEWART, P.C.  
111 Monument Circle, Suite 4600  
Indianapolis, IN 46204  
Telephone: 317-916-1300  
Facsimile: 317-916-9076  
*bonnie.martin@ogletree.com*

45009537.1